

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

PHYLLIS TUMA)	
)	
Appellant,)	
)	OSPI 224-93
vs.)	
)	
BOARD OF TRUSTEES, SANDERS COUNTY)	<u>DECISION AND ORDER</u>
SCHOOL DISTRICT NO. 6,)	
)	
Respondents.)	

* * * * *

Phyllis Tuma is appealing the September 10, 1993, Order of acting Sanders County Superintendent Joyce Decker Wegner dismissing Ms. Tuma's appeal. The County Superintendent held that she lacked jurisdiction because the appeal was not filed within the time allowed under § 20-4-206, MCA.

Ms. Tuma was a non-tenured teacher employed by the Trustees of Trout Creek School, Sanders County District No. 6 [hereinafter "the Trustees"]. On November 10, 1992, the Trustees sent her a letter stating that she would not be offered a contract for 1993-1994. Ms. Tuma took no action at the time. She contends that the letter was not a legally sufficient notification of termination of a non-tenured teacher.

Her Montana Education Association representative sent the Trustees a letter on May 25, 1993, stating that she had not been terminated therefore she was reelected. On June 9, 1993, the Trustees responded that they had terminated Ms. Tuma the prior November.

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On June 23, 1993, Ms. Tuma appealed to the County Superintendent on the grounds that the procedure of § 20-4-206, MCA, was not followed. The Trustees answered that because Ms. Tuma's appeal, filed June 23, 1993, was after the 10 days allowed by § 20-4-206, MCA, the County Superintendent lacked jurisdiction and should dismiss the appeal. The County Superintendent asked for and received briefs on this issue then granted the Trustees' motion to dismiss.

Ms. Tuma appealed to this Superintendent on the grounds that there are relevant fact issues to be heard. She argued that there is a question of fact of when, if ever, she was legally notified of termination. She also argued that whether the Trustees' voted, as required by § 20-4-206, MCA, is a question.

STANDARD OF REVIEW

The County Superintendent's decision to dismiss the appeal is a conclusion of law. On review of orders dismissing appeals, this Superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 553 P.2d 407, 170 Mont. 296 (1976).

DECISION AND ORDER

The County Superintendent correctly concluded that the time for appealing the veracity of the Trustees' written statement of reasons for terminating a non-tenured teacher ran before this appeal was filed. The order dismissing is AFFIRMED.

MEMORANDUM OPINION

A. Is there a question of fact of when, if ever, Ms. Tuma was legally notified of termination? No, the November, 1992, letter was a legally sufficient notification of termination that met the requirements of § 20-4-206, MCA.

Section 20-4-206, MCA, requires trustees to give written notice of termination by May 1st to non-tenured teachers who will not be rehired. If requested by the teacher within 10 days of receipt of the notice, trustees must give a written statement of the reasons for termination. The teacher has 10 days from receipt of the statement to appeal to the county superintendent.

The November letter is legally sufficient notice under § 20-4-206, MCA. There is no question that the letter states that Ms. Tuma would not be offered a 1993-94 contract and it was sent and received in November, 1992 -- prior to May 1st. This is a conclusion of law based on the letter in the record before the County Superintendent; it is not factual issue.

Ms. Tuma correctly argues that to rule on a motion to dismiss the decision maker must assume all factual contentions in favor of the party opposing dismissal. Buttrell v. McBride Land and Livestock, 553 P.2d 407, 170 Mont. 296 (1976). There is no dispute about what the letter states. Her factual contention is that she did not understand the letter was a notification of termination. She is correct that for purposes of reviewing a motion to dismiss it must be assumed that she did not understand the November letter was a notice of termination.

That fact, however, does not prevent this appeal from being dismissed. The 10 day statute of limitations begins to run from the date a legally sufficient notification of termination is received, not from the date it is understood.

This appeal does not present a question of a notification to a non-tenured teacher that is so vague that a reasonable person cannot read it and understand what it means. The letter, which Ms. Tuma included as attachment A of her brief to the County Superintendent and which neither party contended was an inaccurate copy of what was sent or received, states:

Due to the need of teacher flexibility in grades K-8 at Trout Creek School we are asking that all faculty receiving a contract for the 1993-94 school year, both tenured and non-tenured hold a Montana Elementary endorsement on their certification.

At this time we are not in the position to offer you a contract for the 1993-94 school year since we are restructuring the teacher assignments and need the flexibility of the elementary endorsement.

You are welcome to apply for any upcoming positions, however we do want you to be aware that an elementary endorsement will have to be met before employment.

The wording of this letter is adequate to inform a reasonable reader that the district was not offering Ms. Tuma a contract for the 1993-94 school year. The 10 days allowed a non-tenured teacher to challenge the decision not to rehire began to run in November in this case. If Ms. Tuma was going to challenge the Trustees actions the time to do so was in November, 1992, not June, 1993.

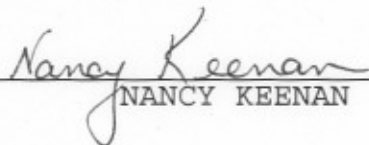
In June, 1993, the relevant fact for ruling on the motion to dismiss was whether or not she received an adequate notification of

termination in November. That fact was not in question when the County Superintendent ruled on the motion to dismiss. As a matter of law the November 10, 1992, letter attached to Ms. Tuma's brief established that legally sufficient notification of termination of a non-tenured teacher was sent before May 1, 1993, and was not timely appealed.

B. Does the County Superintendent have jurisdiction in this case to review whether the Trustees voted to terminate Ms. Tuma? No, the 10 day period in § 20-4-206, MCA, is a statute of limitation on appealing the Trustees' November, 1992, notification. Keller v. School District No.5, 774 P.2d 209, 237 Mont. 481 (1989). Any challenge of the procedure the Trustees followed had to be initiated within the statute of limitation for appealing their decision.

Statutes of limitation are legislative grants of jurisdictional power to the tribunal hearing the matter. MCI Telecommunications Corp. v. Montana Department of Public Service Regulation, 858 P.2d 364, 260 Mont. 175 (1993). After the time allowed for appealing had expired, the County Superintendent no longer had the power review the procedure followed by the Trustees.

DATED this 7 day of September, 1994.


NANCY KEENAN

Tuma.228

CERTIFICATE OF SERVICE

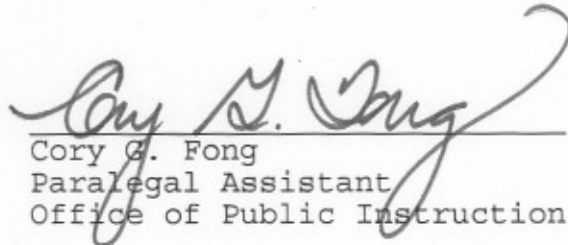
THIS IS TO CERTIFY that on this 12 day of September, 1994, a true and exact copy of the foregoing Order was mailed, postage prepaid, to the following:

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